105TH CONGRESS
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HOUSE OF REPRESENTATIVES

REPORT
105–632

EXTENSION OF AVIATION INSURANCE PROGRAM

JULY 17, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and Infrastructure, submitted the following

REPORT

[To accompany H.R. 4058]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 4058) to amend title 49, United States Code, to extend the aviation insurance program, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BACKGROUND

Commercial insurance companies will usually not insure commercial airline flights to high risk areas such as countries at war or on the verge of war. In many cases, these flights are required to further the foreign policy or national security of the United States. For example, in Operation Desert Shield and Desert Storm, commercial airlines were needed to ferry troops and equipment to the Middle East.

To ensure that flights to high risk areas can operate when needed, Chapter 443 of Title 49 of the U.S. Code authorizes the Secretary of Transportation to provide insurance and reinsurance to commercial airlines against any risk. Before such insurance can be issued, two tests must be satisfied. First, the Secretary must find that the airline cannot acquire the insurance from a commercial insurance company on reasonable terms (Section 44302(a)(2)). Secondly, the President must find that providing the insurance is necessary to carry out the Nation's foreign policy (44302(b)). The insurance may be provided for only 60 days unless the President determines that an extension is needed (Section 44306(b)). FAA rules governing this program can be found at 14 CFR Part 198.

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This aviation insurance program (commonly known as war risk insurance) offers both a premium and a nonpremium policy. Under the premium policy, insurance is provided to U.S. or foreign airlines for commercial scheduled or charter service. It can be used only for international flights. A premium is paid by the airline to the Federal Aviation Administration (FAA) for the coverage just as in a normal insurance arrangement.

The non-premium policy is issued to airlines operating under contract to a government agency, usually either the State or Defense Department. It can cover either domestic or international flights. Although no premium is paid by the airline under this policy, airlines must pay a one-time binder fee of $575 per aircraft. In the event of a loss, the contracting government agency (usually either State or Defense) would have to indemnify the FAA for any claims it had to pay to the airline.

Both premium and non-premium insurance will cover both hull loss (the destruction of the aircraft) and liability (injury, death, or damage to property). According to the FAA, it has paid $151,000 in claims under the non-premium insurance program. It has never paid a claim under the premium insurance program.

Premiums paid for coverage, the binder fee, and any sums appropriated support a fund which is used to defray the cost of operating the war risk program. This fund had a balance at the beginning of this fiscal year of $67,785,000 and with the accumulation of interest is expected to have a balance at the end of this year of $71,500,000. The cost of administering the program varies but was about $345,000 last year.

The war risk insurance program was first authorized in 1951. Insurance was provided under this program in the early 1970s in the aftermath of attacks by Palestinian terrorists, and also during the final days of the Vietnam war. Since 1975, non-premium war risk insurance has been activated over 5,000 times including in the following cases.

Period and place of activation	*Number of flights*
1983–1984, to Honduras	50
August 17, 1990 to May 24, 1991, to the Middle East (Operation Desert Shield/Storm)	+5,000
January 11, 1991, Department of State flight from Oman to Frankfurt	1
January 11 to April 14, 1993, to Kuwait (Operation Desert Caravan)	20
December 8, 1992 to early 1994, to Mogadishu and Kisimayo, Somalia (Operation Restore Hope)	155
February 28, March 2, and April 7, 1994, to Tbilisi, Georgia	3
September to October 1994, to Haiti (Operation Uphold Democracy)	32
April 15 to September 30, 1996, to Tuzla Bosnia (Operation Joint Endeavor)	111

The program has been reauthorized 11 times and is now scheduled to expire on December 31 of this year. In the past, the reauthorization of the war risk program has been relatively routine and was often accomplished without any changes or even the need for holding a hearing. However, as a result of the experience gained during the Persian Gulf War, new issues were raised that needed to be addressed.

When the program was reauthorized in 1992 (Title IV of P.L. 102–581, 106 Stat. 4897), the insurance coverage was expanded to cover certain domestic flights and also flights being operated pursuant to an agreement between the U.S. government and a foreign government. In addition, the legislation directed GAO to review the administration of the war risk insurance program during the Persian Gulf war to determine whether its efficiency could be improved. GAO submitted its report in July 1994 and made the following recommendations to Congress:

Provide a mechanism to ensure that there are sufficient funds available to reimburse airlines for losses that exceed the amount in FAA's insurance fund.

Clarify whether a presidential determination is needed before non-premium insurance can be issued and for each subsequent 60-day extension.

Congress partially addressed GAO's concerns in P.L. 105137 and in Section 9514 of Title 10 of the U.S. Code, that was added by the Defense Department Reauthorization Act (P.L. 104–201). Section 9514 provides a mechanism to reimburse airlines in most cases. It directed the Secretary of Defense to indemnify the FAA for any claims paid by the war risk insurance fund within 30 days of DOT's determination that it owes an airline money for damage to an aircraft.

This ensures that airlines will receive prompt payment for losses when they conduct flights on behalf of the Defense Department. These constitute the bulk of the flights covered by the war risk insurance program. However, in those limited cases where flights are conducted for the State Department, under the premium insurance program, or for some other purpose, the airlines still have no assurance they will be paid in a timely fashion. This can pose significant problems for a relatively small airline with few planes in its fleet where the unreimbursed loss of even one aircraft can have a significant adverse effect on its business. This seems unfair when the flight is authorized and insured by the U.S. government.

Last year, the Committee attempted to address this "prompt payment" problem in H.R. 2036, H. Rept. 105–244. This bill would have addressed the problem by permitting FAA to borrow money from the Federal treasury in order to reimburse airlines for their loss. FAA could then seek a supplemental appropriation in order to pay off the debt or replenish the fund. Under this approach, the airline would not have to endure an unreimbursed loss while the supplemental appropriation made its way through Congress.

However, the Administration objected to this provision in a July 22, 1997 letter from the General Counsel of the Department of Transportation (DOT). As a result, the borrowing authority was removed from the bill before it passed the House and the legislation enacted (P.L. 105–137) was silent on this issue. However, in urging the elimination of the borrowing authority, DOT did agree to help develop an alternative.

On April 20, 1998, the Secretary of Transportation did submit a legislative proposal that included a number of legislative initiatives including one addressing aviation insurance and the prompt payment problem. In submitting his proposal, the Secretary described his solution as follows:

> SEC. 209. Subsection (a) proposes an amendment that would avert a potential problem in the aviation insurance program by helping ensure prompt payment in the event of a loss. It is possible that an air carrier who has obtained

> aviation insurance from the FAA under chapter 443 may sustain a physical damage loss that is covered by that insurance but exceeds the amount available for repayment in the aviation insurance revolving fund. In such event, FAA's full payment of the carrier's claim would need to await congressional action to appropriate a sufficient amount into the revolving fund. Because of the possibility of delays in the appropriations process, the carrier may wish to obtain "prompt payment" insurance from a commercial insurer, to ensure that the carrier receives payment in a timeframe commensurate with its financial obligations. The "prompt payment" insurance contract between the carrier and the commercial insurer would, in that case, provide that the commercial insurer would be subrogated to the air carrier's rights against the U.S. Government under the chapter 443 insurance. After the necessary funds have been appropriated to the revolving fund, FAA would reimburse the commercial insurer for its payment to the carrier, provided that the payment was for a loss covered by the chapter 443 insurance and that the payment had been approved by the FAA.
>
> It is not clear under current law that the commercial insurer has a right of action against the Government to recover an approved payment for a covered loss, when an appropriation to the Revolving Fund is delayed. The amendment made by this section would clarify that right. This amendment will make it easier for air carriers to obtain "prompt payment" insurance.

The reported bill (H.R. 4058) adopts the solution suggested by the Secretary. While not an ideal solution, the Committee recognizes that it is probably the best that can be achieved under the constraints of current budget rules. It would address the prompt payment problem by making it easier for an airline to obtain "prompt payment" insurance from a commercial insurance company. Such insurance would allow an airline to obtain reimbursement for its loss from a commercial insurance company quickly even if the FAA's insurance fund was insufficient and Congress failed to replenish it quickly. The commercial insurer would be subrogated to the air carrier's rights against the U.S. government so that when money was appropriated to replenish the FAA's fund, the commercial insurer could recover the money it paid to the airline.

Having suggested this approach, DOT should now work with the insurance companies and airlines affected in order to ensure that prompt payment insurance will be available in practice at a reasonable cost.

The bill would also reauthorize the program for 5 years. This has been the typical reauthorization period in the past.

SECTION-BY-SECTION SUMMARY

Section 1 amends the aviation insurance program in Chapter 443 of Title 49 of the U.S. code.

Subsection (a) restates existing law permitting an airline to sue the U.S. government when a loss insured under the war risk program is in dispute. The subsection also adds a new provision permitting such lawsuits by an insurance company when that company is subrogated to the rights of an airline and the company has paid the airline for damage to an aircraft that is covered by premium insurance under the war risk program.

Subsection (b) extends the program until December 31, 2003.

Hearings and Legislative History

The Subcommittee on Aviation held hearings on the issue of war risk insurance on May 1, 1997. H.R. 4058 was introduced on June 16, 1998. The Committee has not held hearings on the reported legislation.

Committee Consideration

On June 18, 1998, the Subcommittee on Aviation reported the bill, by unanimous voice vote, to the Committee on Transportation and Infrastructure. On June 25, 1998, the Committee met in open session and ordered the bill reported, without an amendment, by voice vote with a quorum present. There were no recorded votes taken during Committee consideration of H.R. 4058.

Rollcall Votes

Clause 2(l)(2)(B) of rule XI requires each committee report to include the total number of votes cast for and against on each roll call vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with ordering H.R. 4058 reported. A motion by Mr. Duncan to order H.R. 4058 favorably reported to the House, without amendment, was agreed to by voice vote, a quorum being present.

Committee Oversight Findings

With respect to the requirements of clause 2(l)(3)(A) of Rule XI of the Rules of House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

Cost of the Legislation

Clause 7 of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

Compliance With House Rule XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 4058.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4058 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 1998.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4058, a bill to amend Title 49, United States Code, to extend the aviation insurance program, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria V. Heid.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 4058—A bill to amend Title 49, United States Code, to extend the aviation insurance program, and for other purposes

Summary: H.R. 4058 would amend Title 49 of the U.S. Code to extend the authorization for the aviation insurance program to December 31, 2003. The bill also would clarify the conditions under which a person may bring a civil action against the United States government for a loss insured under the program.

Enacting H.R. 4058 could increase federal spending, but because claims under the aviation insurance program are very rare, CBO estimates that extending the program would probably have no significant impact on the federal budget over the next five years. Because the bill could affect direct spending, pay-as-you-go procedures would apply. H.R. 4058 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no impact on the budgets of state, local, or tribal governments.

Background: The Federal Aviation Administration's (FAA's) aviation insurance program insures aircraft operations that are deemed essential to the foreign policy interests of the United States when commercial insurance is unavailable on reasonable terms. The program is financed through the Aviation Insurance Revolving Fund, which is supported by premiums paid for coverage (for "premium insurance"), one-time binder fees paid by the airlines (for "nonpremium insurance"), and interest on investments in U.S. Treasury securities. According to the FAA, from 1959 through June 1998, the fund accumulated about $69 million in revenues and paid out a total of $151,000 in claims. New receipts from airlines total less than $500,000 a year.

Nonpremium insurance, which accounts for about 99 percent of all aviation insurance, is for U.S. airlines that are providing contract services for federal agencies that have indemnification agreements with the Department of Transportation (DOT). Currently, only the Department of Defense (DoD) and the State Department have such agreements with DOT. In the event of a loss, DoD and the State Department would reimburse the FAA for the insurance claims it would have to pay the airlines. Since 1975, there have been approximately 5,400 flights covered by the program.

Premium insurance is provided to U.S. or foreign airlines for regularly scheduled commercial or charter service. Airlines pay a premium to FAA for the coverage, similar to a commercial insurance policy. Both types of insurance policies cover hull loss and liability.

Estimated cost to the Federal Government: H.R. 4038 would extend the authorization for the FAA's aviation insurance program through December 31, 2003. Under current law, the program will end on December 31, 1998. Enacting the bill could affect federal spending if new claims occur from extending the insurance program. Moreover, such new spending could be very large, particularly if a claim exceeded the balance of the trust fund and the FAA had to seek a supplemental appropriation. But historical experience suggests that claims under this program are very rare; therefore, extending the aviation insurance program would probably have no significant impact on the federal budget over the next five years.

H.R. 4058 would also make clear that an insured party could purchase an additional insurance policy from a third party under which the third party would, in the event of a claim, reimburse the insured party immediately and then seek reimbursement from the federal government. Such a contract would allow parties insured under the aviation insurance program to be assured of immediate reimbursement for any claims. According to the FAA, this provision clarifies what is already authorized under current law. Enacting this provision could affect federal spending if the clarification made the aviation insurance program more appealing to carriers and thereby increased the number of insured flights—and potential claims—under the program. CBO expects, however, that there would be no significant budgetary effect over the next five years.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act specifies pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 4058 could increase direct spending, but the effect is not likely to be significant over the next five years, assuming that claims made under the aviation insurance program continue to be very rare.

Intergovernmental and Private-Sector Impact: H.R. 4058 contains no intergovernmental or private-sector mandates as defined in UMRA and would have no impact on the budgets of state, local, or tribal governments.

Estimate prepared by: Victoria V. Heid.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of the Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (2)(l)(4) of rule XI of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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SUBTITLE VII—AVIATION PROGRAMS

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SUBPART III—SAFETY

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CHAPTER 443—INSURANCE

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§ 44309. Civil actions

⟦(a) DISPUTED LOSSES.—A person may bring a civil action in a district court of the United States against the United States Government when a loss insured under this chapter is in dispute. A civil action involving the same matter (except the action authorized by this subsection) may not be brought against an agent, officer, or employee of the Government carrying out this chapter. To the extent applicable, the procedure in an action brought under section 1346(a)(2) of title 28 applies to an action under this subsection.]

(a) LOSSES.—

(1) ACTIONS AGAINST UNITED STATES.—A person may bring a civil action in a district court of the United States or in the United States Court of Federal Claims against the United States Government when—

(A) a loss insured under this chapter is in dispute; or

(B)(i) the person is subrogated under a contract between the person and a party insured under this chapter (other than section 44305(b)) to the rights of the insured party against the United States Government; and

(ii) the person has paid to the insured party, with the approval of the Secretary of Transportation, an amount for a physical damage loss that the Secretary has determined is a loss covered by insurance issued under this chapter (other than section 44305(b)).

(2) LIMITATION.—A civil action involving the same matter (except the action authorized by this subsection) may not be brought against an agent, officer, or employee of the Government carrying out this chapter.

(3) PROCEDURE.—To the extent applicable, the procedure in an action brought under section 1346(a)(2) of title 28 applies to an action under this subsection.

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§ 44310. Ending effective date

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter is not effective after December 31, [1998] *2003*.

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